Assessment Year 1990-91

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

I.T.A. No. 54 of 2001
(Old No. 91 of 2000)

The Commissioner of Income Tax, Meerut
& another ……. Appellants

Versus

Halliburton Offshore Services Inc.
As agent of Mr. Dietzen C., Bombay …….. Respondent

Hon. P.C. Verma, A.C.J.
Hon. Rajesh Tandon, J.

Mr. P.C.Maulekhi, learned counsel for Income Tax Department

The matter is squarely covered by our decision dated 9th October, 2003 in Income Tax Appeal No. 57 of 2002; The Commissioner of Income Tax, Dehradun & another V/s SEDCO Forex Internation Drilling Co. Ltd.

The question raised before us is follows:

"Whether on the facts and in the circumstances of the case, Ld. ITAT was legally correct to hold that the salary paid to the assessee for the said off period outside India was not chargeable to Indian Income Tax Act in terms of section 9(1)(ii) of the Income Tax Act, 1961?"

In our decision dated 9th October 2003 in Income Tax Act Appeal No. 57 of 2002; The Commissioner of Income Tax, Dehradun & another V/s SEDCO Forex International Drilling Co. Ltd., it has been held as under:

"Therefore the payment of salary for OFF period was income earned in India i.e. for services rendered in India u/s 9(1)(ii).

Lastly, we would like to point out that in this case the assessment records show that from the income of the Indian operations the salary in its entirety (including salary for the off period) has been paid by the employer Company. This conduct

shows the intention of the contracting parties. Hence the entire salary for both the periods was taxable in India u/s 9(1)(ii).”

For the reasons aforesaid, we answer the first question in the negative i.e. in favour of the department and against the assessee.

Appeal is disposed of. No order as to costs.

(Rajesh Tandon, J.) **(P.C. Verma, A.C.J.)**

Dt. 15.05.2004
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